

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Parks and Recreation	(2) MEETING DATE 3/8/2016	(3) CONTACT/PHONE Nick Franco 805-781-5204	
(4) SUBJECT Request to deny land owner consent for a permit application to abandon a County owned easement and establish a new easement with a County maintained trail on adjacent private property. District 3.			
(5) RECOMMENDED ACTION It is recommended that the Board authorize the Director of the Department of Parks and Recreation to continue to deny land owner consent for project DRC2014-00072, McCarthy CUP, Cave Landing Road, Avila Beach, APN 076-231-063 until the applicant demonstrates separate utility of the proposed trail and identifies a source for funding ongoing maintenance that is not dependent on County Parks' funds.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input checked="" type="checkbox"/> Board Business (Time Est. <u>60 mins</u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW David E. Grim			
(18) SUPERVISOR DISTRICT(S) District 3			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Parks and Recreation / Nick Franco
805-781-5204

DATE: 3/8/2016

SUBJECT: Request to deny land owner consent for a permit application to abandon a County owned easement and establish a new easement with a County maintained trail on adjacent private property. District 3.

RECOMMENDATION

It is recommended that the Board authorize the Director of the Department of Parks and Recreation to continue to deny land owner consent for project DRC2014-00072, McCarthy CUP, Cave Landing Road, Avila Beach, APN 076-231-063 until the applicant demonstrates separate utility of the proposed trail and identifies a source for funding ongoing maintenance that is not dependent on County Parks' funds.

DISCUSSION:

The County owns an easement on the applicant's property for County access to facilities and for public recreation associated with a future segment of the California Coastal Trail and the existing Ontario Ridge Trail currently used by the public. The applicant asserts that he has a right granted by the easement to relocate the easement and that the County must reasonably agree to this relocation or quitclaim the easement back to him. The easement agreement gives the applicant reasonable discretion to relocate the easement, but only within applicant's owned parcel (Parcel 2) and with the County's consent. The current request is not to relocate the easement on the same parcel, but rather to quitclaim the current easement and simultaneously establish a new easement on the adjacent private parcel (Parcel 1). In addition, the applicant wishes to construct a trail and associated minor appurtenant structures (fence, signs, etc.) within the proposed new easement and have the County maintain the new trail. The trail terminates on the top of Ontario Ridge and connects with current trails that may or may not be legally established on private property. The County General Plan Parks and Recreation Element outlines policies related to trails that include:

Policy 3.10: Extensive trail systems, such as the California Coastal Trail, the Juan Bautista de Anza and the Salinas River Trails, will generally be developed in a series of shorter, but viable, segments. Such segments shall not be constructed until a viable link can be established connecting residential communities, parks, staging areas, or other public points of interest.

Policy 3.14: Prior to the construction and/or County acceptance of a public trail corridor, the approving authority must make findings that:

1. Sufficient funds are available for the trail's on-going maintenance; and
2. The liability for the trail has been addressed pursuant to Policy 3.15

Policy 3.15: The County shall fully indemnify, protect and hold harmless (including all costs and attorney fees) private property owners who dedicate or grant a public trail easement from, and against, those risks and damages that arise out of the usage of the trail easement by the public and which, in good conscience, should not be borne by the private property owner.

The applicant has submitted a permit application to the Department of Planning and Building. The application is currently

considered incomplete in part because County Parks has not granted land owner consent to proceed with the permit application. Land owner consent is required when an applicant is proposing a project involving another's property. In this instance, San Miguelito Partners, the owner of Parcel 1 (the parcel upon which the proposed easement is to be located), has provided land owner consent. County Parks, owner of the easement on Parcel 2 (applicant's parcel), has not provided land owner consent to allow the applicant to extinguish the easement and to establish a new easement on Parcel 1. County Parks believes that the proposal is inconsistent with the policies of the Parks and Recreation Element and is not consistent with the public's best interest because it will require a reduction of services in other areas in order to maintain this trail and will be difficult to manage due to the lack of connectivity between two publicly accessible points. County Parks has stated that it would grant land owner consent if the applicant:

1. Demonstrates separate utility of the proposed trail; and
2. Identifies a source for funding ongoing maintenance that is not dependent on County Parks' funds

Background:

This item is solely for the consideration of the County granting land owner consent for the applicant to proceed with the permit process for the proposed project (relocation of the easement). Land owner consent allows the applicant to act as the County's agent with respect to the County's easement interest over applicant's parcel (Parcel 2). This is not a hearing to consider the proposed project or proposed discretionary development permit. Currently, the County's easement over Parcel 2 is not a developed trail. While the public uses the easement for recreational purposes, the County does not perform regular maintenance of the easement.

This application involves relocating the County's easement on Parcel 2 and construction of a new trail over another parcel. The Applicant has not identified a source for funding ongoing maintenance of the proposed trail which is not dependent on County Parks' funds as policy 3.14 requires.

The existing publicly used trail may or may not remain on Parcel 2, depending on whether the public has acquired an easement by prescription over the parcel. Moving the easement and constructing a new trail may or may not have the applicant's desired result of extinguishing the public's use of their property (Parcel 2). In that regard, members of the public have asserted that the trail is a prescriptive easement owned by the public, with said prescriptive rights arising before the County acquired its property interest in the parcel. While that assertion appears to have merit, only a court can reach that finding. To date, no action has been filed asserting that an easement has been created by prescription in favor of the public over the applicant's parcel.

OTHER AGENCY INVOLVEMENT/IMPACT:

County Parks has coordinated the review and response to the applicant's request for land owner consent with the Department of Planning and Building, County Counsel, and the County Administrative Office.

FINANCIAL CONSIDERATIONS:

If land owner consent is approved, the County is agreeing to:

1. Allow the applicant to act as the County's agent in processing the Coastal Development Permit/Minor Use Permit, thereby allowing the processing to proceed;
2. If the discretionary Coastal Development Permit/Minor Use Permit is ultimately approved, fund ongoing maintenance of the proposed trail (estimated costs include annual maintenance, staff travel time to and from the area, recurring major maintenance, and housekeeping costs such as litter removal, sign maintenance, etc.; estimated to be approximately \$14,000 annually);
3. If the discretionary Coastal Development Permit/Minor Use Permit is ultimately approved, accept a trail that connects with an existing trail on private property that may or may not be legally established.

RESULTS:

Denial of land owner consent until the two outstanding issues are addressed will provide consistency with the Parks and Recreation Element policies for accepting trail easements and/or new trails as additions to the County Parks system (Staff Recommendation).

Approving land owner consent will allow the applicant to continue pursuing a discretionary permit to move the trail, which,

if approved, would result in the County owning and maintaining a new trail and acquiring that trail in a manner inconsistent with current policies. This could result in additional groups and individuals seeking similar actions throughout the County to place unfunded trail projects within the County's trail inventory.

ATTACHMENTS

1. Attachment 1 DRC2014-00072_MCCARTHY_MUP
2. Attachment 2 11.18.08 Purchase Agreement for Lot #3 and temporary Cave landing Easement on Lot #2
3. Attachment 3 12.15.09 Grant of Easement for Access - Cave Landing, Ontario Ridge
4. Attachment 4 7.30.15 Dept of Parks and Recreation Comment Letter
5. Attachment 5 Consent of Landowner Form
6. Attachment 6 Parks and Recreation Element Trails Policies